

REMARKS/ARGUMENTS

Prior to entry of this Amendment, claims 12-15 and 22-25 were pending in this application. Claim 22 has been amended, claims 30 and 31 have been added, and no claims have been canceled herein. Therefore, claims 12-15 and 22-31 are now pending. Applicant respectfully requests reconsideration of these claims for at least the reasons presented below.

Examiner's Interview

An Examiner's Interview was conducted between Examiner Dihn and the undersigned on January 16, 2008. As an initial matter, the undersigned thanks Examiner Dihn for the kind and courteous interview and for carefully considering the Applicant's perspective regarding the pending claims and the reference relied upon as the basis of the present rejection.

The Interview was directed to the current rejection and the reference (Alferness) relied upon in that rejection. The argument presented by the undersigned with regard to the distinctions between the pending claims and Alferness and the reasons the pending claims are believed to be non-obvious over Alferness are presented in detail below. In summary, the Applicants maintain that Alferness does not teach or suggest each claimed limitation. For example, Alferness does not teach or suggest a storage medium with a number of audio tracks, each audio track having stored therein a complete version of a song. Furthermore, even if the mixed songs produced by Alferness were to be recorded on a medium as the Office Action suggests, Alferness does not teach or suggest also recording a control track (i.e., the control script of Alferness) on that same medium. While the Interview did not result in agreement on these points, the Applicants respectfully request that the Examiner reconsider these arguments as presented in detail below.

35 U.S.C. § 103(a) Rejection, Alferness

Claims 12-15 and 22-29 have been rejected under 35 U.S.C. § 103(a) as being anticipated by U. S. Patent No. 7,078,607 to Anton Perry Alferness (hereinafter "Alferness"). The Applicants respectfully submit that the Office Action does not establish a *prima facie* case of obviousness in rejecting this claim. Therefore, the Applicants request reconsideration and withdrawal of the rejection.

In order to establish a *prima facie* case of obviousness, the Office Action must establish: 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine their teachings; 2) a reasonable expectation of success of such a modification or combination; and 3) a teaching or suggestion in the cited prior art of each claimed limitation. See MPEP § 706.02(j). As will be discussed below, Alferness does not teach or suggest each claimed limitation. For example, Alferness does not teach or suggest a storage medium with a number of audio tracks, each audio track having stored therein a complete version of a song and a control track comprising information for determining which version of at least one of the audio tracks is to be played.

As noted previously, Alferness is directed to "music playback software, and, more specifically, to dynamically changing music and sound compositions." (Col. 1, lines 13-15) Under Alferness, "a script tool is used to create scripts that are used to play back a song. The scripts are user definable and may, for example, define a specific order to play the components, define the components that may be played next to each other during the playback." (Col. 1, lines 60-65) However, Alferness does not disclose, expressly or inherently, a storage medium having audio tracks, each audio track having stored therein a complete version of a song. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. (Col. 2, lines 55-58) These elements are mixed according to the controlling script when a

selected song is played back. (Col. 3, lines 34-46, col. 6, lines 13-34, col. 6, line 61 - col. 7, line 7)

That is, Alferness does not store complete songs in each of the individual tracks. Instead, Alferness stores individual sound elements in each track, e.g., a vocal track, a guitar track, a drums track, etc. Collectively, these tracks may represent a complete song. However, applying these teachings to the pending claims misses a recitation of the pending claims. That is, the pending claims recite storing a complete version of a song in each track. Alferness on the other hand teaches storing individual sound elements of a song in each track, but not storing a complete song in each track. Furthermore, under Alferness, it is not until the tracks are played back under control of the script that these sound elements are mixed to produce the complete song. That is, Alferness does not disclose storing a complete, previously mixed song in an audio track. In fact, the mixing of Alferness occurs during playback.

In response to this argument, the Office Action argues that it would be obvious to record the mixed songs produced by Alferness on a storage medium. See Office Action page 3. It should be noted that, under Alferness and as explained above, mixing to produce a complete sound occurs during playback of the individual tracks and under the control of the control script. Therefore, in light of the teachings of Alferness, the Office Action must be suggesting that the individual tracks be mixed and played back from one (first) storage medium, under control of the control script, and the resulting complete, mixed song then be recorded onto another (second) storage medium.

However, even if the mixed songs produced by Alferness were to be recorded on a second storage medium as the Office Action suggests, Alferness does not teach or suggest also recording a control track (i.e., the control script of Alferness) on that same, second medium. In fact, since under Alferness the purpose of the control script is to mix the individual sound tracks to produce the mixed song, recording the control script on the second medium with the mixed songs would serve no purpose since the songs on the second medium are already mixed. That is,

once the individual sound tracks from the first medium are played out and mixed under control of the control script, the purpose of the control script has been served and there would be no logical reason to then record that control script onto the second medium. Therefore, Alferness does not teach or suggest a storage medium with a number of audio tracks, each audio track having stored therein a complete version of a song and a control track comprising information for determining which version of at least one of the audio tracks is to be played.

Claim 12, upon which claims 13-15 and 30 depend, recites in part a "storage medium comprising: N number of audio tracks, each audio track having stored therein a complete, previously mixed song; V versions of at least one of the N audio tracks; and a control track comprising information for determining which of the V versions is to be played.."
Alferness does not disclose, expressly or inherently, a storage medium comprising a number of audio tracks with each audio track having stored therein a complete, premixed song. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. in each track and mixing these elements according to the controlling script when a selected song is played back. Furthermore, even if the mixed songs produced by Alferness were to be recorded on a second storage medium as the Office Action suggests, Alferness does not teach or suggest also recording a control track (i.e., the control script of Alferness) on that same, second medium. For at least these reasons, claims 12-15 and 30 should be allowed.

Claim 22, upon which claims 23-25 depend, recites in part "recording a base version of a complete song by an artist; mixing a first version of the base version in a studio under control of the artist; mixing a second version of the base version in a studio under control of the artist; mixing a third version of the base version in a studio under control of the artist; encoding the base version on a first track of a storage medium; encoding the first version on a second track of the storage medium; encoding the second version on a third track of the storage medium; encoding the third version on a fourth track of the storage medium; and encoding a control track on the storage medium, the control track comprising information for determining which of the base version, first version, second version or third version is to be played."

Alferness does not disclose, expressly or inherently, encoding mixed versions of a complete song on individual tracks of a storage medium. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. and mixing these elements according to the controlling script when a selected song is played back. Additionally, Alferness does not teach the different versions being mixed in a studio under control of the artist. (See also new claims 30 and 31) Rather, the mixing performed under Alferness is performed during playback under control of the control script and user. Furthermore, even if the mixed songs produced by Alferness were to be recorded on a second storage medium as the Office Action suggests, Alferness does not teach or suggest also encoding a control track (i.e., the control script of Alferness) on that same, second medium. For at least these reasons, claims 22-25 should be allowed.

Claim 26, upon which claims 27-29 and 31 depend, recites in part "mixing a first complete version of a media work; mixing a second complete version of the media work; recording the mixed first complete version of the media work on a first track of a storage medium; recording the mixed second complete version of the media work in a second track of the storage medium; and recording a control track on the storage medium, the control track comprising information for determining which of the first complete version or second complete version of the media work is to be played." Alferness does not disclose, expressly or inherently, recording mixed, complete versions of a media work on individual tracks of a storage medium. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. and mixing these elements according to the controlling script when a selected song is played back. Furthermore, even if the mixed songs produced by Alferness were to be recorded on a second storage medium as the Office Action suggests, Alferness does not teach or suggest also recording a control track (i.e., the control script of Alferness) on that same, second medium. For at least these reasons, claims 26-29 and 31 should be allowed.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

/William J. Daley/
William J. Daley
Reg. No. 52,471

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
WJD:jep
61273318 v1